



Senate

General Assembly

File No. 464

February Session, 2004

Substitute Senate Bill No. 230

Senate, April 6, 2004

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING PROBATE COURT ADMINISTRATION AND PROCEEDINGS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 45a-25 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2004*):

3 (a) A judge of probate shall not appear as attorney in any contested
4 matter in any court of probate.

5 (b) For the purposes of subsection (a) of this section, a matter before
6 a court of probate is a contested matter when any party to such matter
7 informs the court, orally or in writing, of any objection or opposition in
8 such matter, without regard to the apparent merit or lack of merit of
9 such objection or opposition.

10 Sec. 2. Section 45a-623 of the general statutes is repealed and the
11 following is substituted in lieu thereof (*Effective October 1, 2004*):

12 In any proceeding under sections 45a-603 to 45a-622, inclusive, that
13 is contested, the Court of Probate shall, upon motion of any party other
14 than a party who made application for the removal of a parent as a
15 guardian, under rules adopted by the judges of the Supreme Court,
16 transfer the case to the Superior Court. In addition to the provisions of
17 this section, the Court of Probate may, on the court's own motion or
18 that of any interested party, transfer [the case] any proceeding under
19 sections 45a-603 to 45a-622, inclusive, to another judge of probate,
20 which judge shall be appointed by the Probate Court Administrator
21 from a panel of qualified probate judges who specialize in children's
22 matters. Such panel shall be proposed by the Probate Court
23 Administrator and approved by the executive committee of the
24 Connecticut Probate Assembly. [The location of the hearing shall be in
25 the original court of probate, except upon agreement of all parties and
26 the Department of Children and Families, where applicable.] If the
27 case is transferred and venue altered, the clerk of the Court of Probate
28 shall transmit to the clerk of the Superior Court, or the probate court to
29 which the case was transferred, the original files and papers in the
30 case.

31 Sec. 3. Section 45a-650 of the general statutes is repealed and the
32 following is substituted in lieu thereof (*Effective October 1, 2004*):

33 (a) At any hearing for involuntary representation, the court shall
34 receive evidence regarding the condition of the respondent, including
35 a written report or testimony by one or more physicians licensed to
36 practice medicine in the state who have examined the respondent
37 within thirty days preceding the hearing. The report or testimony shall
38 contain specific information regarding the disability and the extent of
39 its incapacitating effect. The court may also consider such other
40 evidence as may be available and relevant, including, but not limited
41 to, a summary of the physical and social functioning level or ability of
42 the respondent, and the availability of support services from the
43 family, neighbors, community [,] or any other appropriate source. Such
44 evidence may include, if available, reports from the social work service
45 of a general hospital, municipal social worker, director of social

46 service, public health nurse, public health agency, psychologist,
47 coordinating assessment and monitoring agencies, or such other
48 persons as the court deems qualified to provide such evidence. The
49 court may waive the requirement that medical evidence be presented if
50 it is shown that the evidence is impossible to obtain because of the
51 absence of the respondent or his or her refusal to be examined by a
52 physician or that the alleged incapacity is not medical in nature. If
53 [this] such requirement is waived, the court shall make a specific
54 finding in any decree issued on the petition stating why medical
55 evidence was not required. In any matter in which the Commissioner
56 of Social Services seeks the appointment of a conservator pursuant to
57 chapter 319dd and represents to the court that an examination by an
58 independent physician, psychologist or psychiatrist is necessary to
59 determine whether the elderly person is capable of managing his or
60 her personal or financial affairs, the court shall order such examination
61 unless the court determines that such examination is not in the best
62 interests of the elderly person. The court shall order such examination
63 notwithstanding any medical report submitted to the court by the
64 elderly person or the caretaker of such elderly person. Any medical
65 report filed with the court pursuant to this subsection shall be
66 confidential.

67 (b) Upon the filing of an application for involuntary representation
68 pursuant to section 45a-648, the court may issue an order for the
69 disclosure of the medical information required pursuant to subsection
70 (a) of this section.

71 [(b)] (c) Notwithstanding the provisions of section 45a-7, the court
72 may hold the hearing on the application at a place within the state
73 other than its usual courtroom if it would facilitate attendance by the
74 respondent.

75 [(c)] (d) If the court finds by clear and convincing evidence that the
76 respondent is incapable of managing his or her affairs, the court shall
77 appoint a conservator of his or her estate unless it appears to the court
78 that such affairs are being managed properly without the appointment

79 of a conservator. If the court finds by clear and convincing evidence
80 that the respondent is incapable of caring for himself or herself, the
81 court shall appoint a conservator of his or her person unless it appears
82 to the court that the respondent is being cared for properly without the
83 appointment of a conservator.

84 [(d)] (e) When determining whether a conservator should be
85 appointed and in selecting a conservator to be appointed for the
86 respondent, the court shall be guided by the best interests of the
87 respondent. In making such determination, the court shall consider
88 whether the respondent had previously made alternative
89 arrangements for the care of his or her person or for the management
90 of his or her affairs, including, but not limited to, the execution of a
91 valid durable power of attorney, the appointment of a health-care
92 agent or other similar document. The respondent may, by oral or
93 written request, if at the time of the request he or she has sufficient
94 capacity to form an intelligent preference, nominate a conservator who
95 shall be appointed unless the court finds the appointment of the
96 nominee is not in the best interests of the respondent. In such case, or
97 in the absence of any such nomination, the court may appoint any
98 qualified person, authorized public official or corporation in
99 accordance with subsections (a) and (b) of section 45a-644.

100 [(e)] (f) Upon the request of the respondent or his or her counsel,
101 made within thirty days of the date of the decree, the court shall make
102 and furnish findings of fact to support its conclusion.

103 [(f)] (g) If the court appoints a conservator of the estate of the
104 respondent, it shall require a probate bond. The court may, if it deems
105 it necessary for the protection of the respondent, require a bond of any
106 conservator of the person appointed [hereunder] under this section.

107 [(g)] (h) The court may limit the powers and duties of either the
108 conservator of the person or the conservator of the estate, to include
109 some, but not all, of the powers and duties set forth in subsections (a)
110 and (b) of section 45a-644 [,] and sections 45a-655 and 45a-656, and
111 shall make specific findings to justify such a limitation, in the best

112 interests of the ward. In determining whether or not any such
113 limitations should be imposed, the court shall consider the abilities of
114 the ward, the prior appointment of any attorney-in-fact, health care
115 agent, trustee or other fiduciary acting on behalf of the ward, any
116 support services which are otherwise available to the ward, and any
117 other relevant evidence. The court may modify its decree upon any
118 change in circumstances.

119 Sec. 4. Subsection (b) of section 45a-654 of the general statutes is
120 repealed and the following is substituted in lieu thereof (*Effective*
121 *October 1, 2004*):

122 (b) Except as provided in subsection (e) of this section, an
123 appointment of a temporary conservator shall not be made unless a
124 report is presented to the judge, signed by a physician licensed to
125 practice medicine or surgery in this state, stating: (1) That the
126 physician has examined [such person] the respondent and the date of
127 such examination, which shall not be more than three days prior to the
128 date of presentation to the judge; (2) that it is the opinion of the
129 physician that the respondent is incapable of managing his or her
130 affairs or of caring for himself or herself; and (3) the reasons for such
131 opinion. Any physician's report filed with the court pursuant to this
132 subsection shall be confidential. The court may issue an order for the
133 disclosure of the medical information required pursuant to this
134 subsection.

135 Sec. 5. Subsection (c) of section 45a-660 of the general statutes is
136 repealed and the following is substituted in lieu thereof (*Effective*
137 *October 1, 2004*):

138 (c) The court shall review each conservatorship at least every three
139 years [,] and shall either continue, modify or terminate the order for
140 conservatorship. The court shall receive and review written evidence
141 as to the condition of the ward. The conservator, the attorney for the
142 ward and a physician licensed to practice medicine in this state [,] shall
143 each submit a written report to the court within forty-five days of the
144 court's request for such report. If the ward is unable to request or

145 obtain an attorney, the court shall appoint an attorney. If the ward is
146 unable to pay for the services of the attorney, the reasonable
147 compensation of such attorney shall be established by, and paid from
148 funds appropriated to, the Judicial Department. [, however, if] If funds
149 have not been included in the budget of the Judicial Department for
150 such purposes, such compensation shall be established by the Probate
151 Court Administrator and paid from the Probate Court Administration
152 Fund. The physician shall examine the ward within the forty-five-day
153 period preceding the date of submission of [his] the physician's report.
154 Any physician's report filed with the court pursuant to this subsection
155 shall be confidential. The court may issue an order for the disclosure of
156 medical information required pursuant to this subsection.

157 Sec. 6. Subsection (g) of section 45a-715 of the general statutes is
158 repealed and the following is substituted in lieu thereof (*Effective*
159 *October 1, 2004*):

160 (g) Before a hearing on the merits in any case in which a petition for
161 termination of parental rights is contested in a court of probate, the
162 court of probate shall, on the motion of any legal party except the
163 petitioner, or may on its own motion or that of the petitioner, under
164 rules adopted by the judges of the Supreme Court, transfer the case to
165 the Superior Court. In addition to the provisions of this section, the
166 probate court may, on the court's own motion or that of any interested
167 party, transfer [the] any termination of parental rights case to another
168 judge of probate, which judge shall be appointed by the Probate Court
169 Administrator from a panel of qualified probate judges who specialize
170 in children's matters. Such panel shall be proposed by the Probate
171 Court Administrator and approved by the executive committee of the
172 Connecticut Probate Assembly. [The location of the hearing shall be in
173 the original probate court, except upon agreement of all parties and the
174 Department of Children and Families, where applicable.] If the case is
175 transferred, the clerk of the [court of probate] Court of Probate shall
176 transmit to the clerk of the [superior court] Superior Court, or the
177 probate court to which the case was transferred, the original files and
178 papers in the case. The [superior court] Superior Court or the probate

179 court to which the case was transferred, upon hearing after notice as
180 provided in sections 45a-716 and 45a-717, may grant the petition as
181 provided in section 45a-717.

182 Sec. 7. (NEW) (*Effective October 1, 2004*) In any proceeding before a
183 court of probate, the court may issue an order for the disclosure of
184 medical information relevant to the determination of the matter before
185 the court. The order may require the disclosure of such medical
186 information to: (1) The court; (2) any executor, administrator,
187 conservator, guardian or trustee appointed by the court; (3) any
188 attorney representing the individual who is the subject of such medical
189 information; (4) any guardian ad litem for the individual who is the
190 subject of such medical information; (5) any physician, psychiatrist or
191 psychologist who has been ordered by the court to conduct an
192 examination of such individual; or (6) any other party to the
193 proceeding determined by the court to require such medical
194 information in the interests of justice. Any such medical information
195 filed with the court shall be confidential.

196 Sec. 8. Subsection (b) of section 17a-685 of the general statutes is
197 repealed and the following is substituted in lieu thereof (*Effective*
198 *October 1, 2004*):

199 (b) The application shall allege that the person is an
200 alcohol-dependent person or a drug-dependent person who is
201 dangerous to himself or herself or dangerous to others when he or she
202 is an intoxicated person or who is gravely disabled. The application
203 shall contain a statement that the applicant has arranged for treatment
204 in a treatment facility. A statement to that effect from such facility shall
205 be attached to the application. [The application shall also be
206 accompanied by] At or before the hearing on the application, there
207 shall be filed with the court a certificate of a licensed physician who
208 has examined the person within two days before submission of the
209 application. The physician's certificate shall set forth the physician's
210 findings, including clinical observation or information, or the person's
211 medical history, in support of the allegations of the application, and a

212 finding of whether the person presently needs and is likely to benefit
213 from treatment, and shall include a recommendation as to the type and
214 length of treatment and inpatient facilities available for such treatment.
215 A physician employed by the private treatment facility to which the
216 person is to be committed is not eligible to be the certifying physician.
217 An application filed by a person other than the certifying physician
218 shall set forth the facts and information upon which the applicant
219 bases his or her allegations and the names and addresses of all
220 physicians. Upon the filing of an application under this section, the
221 court may issue an order for the disclosure of the medical information
222 required pursuant to this subsection.

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>
Sec. 3	<i>October 1, 2004</i>
Sec. 4	<i>October 1, 2004</i>
Sec. 5	<i>October 1, 2004</i>
Sec. 6	<i>October 1, 2004</i>
Sec. 7	<i>October 1, 2004</i>
Sec. 8	<i>October 1, 2004</i>

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Effect	FY 05 \$	FY 06 \$
Probate Court	PCAF - None	None	None

Note: PCAF=Probate Court Administration Fund

Municipal Impact: None

Explanation

The bill does the following: (1) clarifies the term “contested matters” in regard to evaluating conflicts of interest where a probate judge appears as an attorney; (2) authorizes the transfer of certain contested cases involving minors to specialized probate courts; and (3) distinguishes the authorized disclosure of certain medical information from that which is protected via confidentiality standards. Passage of the bill would not result in any fiscal impact to the court.

OLR BILL ANALYSIS

sSB 230

AN ACT CONCERNING PROBATE COURT ADMINISTRATION AND PROCEEDINGS**SUMMARY:**

By law, a probate judge may not appear as an attorney in any contested matter in probate court. The bill specifies that a matter is contested when any party informs the court of any objection or opposition whether it appears to have merit.

Under current law, a probate court may transfer certain contested cases regarding minors to another probate judge appointed by the probate court Administrator from a panel of qualified probate judges who specialize in children's matters. The bill eliminates the requirement that in such cases, the location of the hearing must be in the original probate court, except upon agreement of all parties and the Department of Children and Families, where applicable. The bill extends the authority to transfer to uncontested cases.

The bill (1) authorizes probate courts to issue an order to disclose medical information relevant to the determination of the matter before it and (2) and makes such information filed with the court confidential. The order may require the disclosure of such information to specified people and entities.

The bill authorizes probate courts to issue an order for the disclosure of the medical information required in connection with an application for involuntary representation. It also makes any medical report filed with the court in connection with such a case confidential.

The bill gives probate courts the same authority and imposes the same confidentiality requirements in connection with the appointment of a temporary conservator, and the review of a conservatorship, which must occur every three years.

EFFECTIVE DATE: October 1, 2004

Transfer Of Cases To Judges Who Specialize In Children's Matters**DISCLOSURE OF MEDICAL INFORMATION TO PROBATE COURT**

By law, at any hearing for involuntary representation, the court must receive evidence about the condition of the respondent, including a written report or testimony by one or more physicians licensed to practice medicine in Connecticut who have examined the respondent within 30 days preceding the hearing. The report or testimony must contain specific information about the disability and the extent of its incapacitating effect.

The bill authorizes the probate court to issue an order for the disclosure of the medical information required in connection with an application for involuntary representation. It also makes any medical report filed with the court in connection with such a case confidential.

APPOINTMENT OF A TEMPORARY CONSERVATOR

By law, a temporary conservator may not be appointed unless a report is presented to the judge, signed by a physician licensed to practice medicine or surgery in Connecticut, stating (1) that the physician has examined the person and the date of such examination, which may not be more than three days before the date of presentation to the judge; (2) that it is the physician's opinion that the respondent is incapable of managing his affairs or of caring for himself; and (3) the reasons for such opinion.

The bill authorizes the probate court to issue an order for the disclosure of the medical information required in connection with such an application. It also makes any medical report filed with the court in such cases confidential.

DISCLOSURE OF MEDICAL INFORMATION

The bill authorizes the probate court to issue an order for the disclosure of medical information relevant to the determination of the matter before it. The order may require the disclosure of the medical information to (1) the court; (2) any executor, administrator, conservator, guardian or trustee appointed by the court; (3) any attorney representing the individual who is the subject of such medical

information; (4) any guardian ad litem for the individual who is the subject of such medical information; (5) any physician, psychiatrist or psychologist ordered by the court to examine such individual; or (6) any other party to the proceeding determined by the court to require such medical information in the interests of justice. The bill makes any such medical information filed with the court confidential.

BACKGROUND

These cases involve applications concerning the removal of a parent as guardian, termination of parental rights, temporary custody of a minor, reinstatement of a parent as a guardian, appointment or removal of a guardian or a coguardian, or the appointment of a temporary guardian.

Related Legislation

sSB 129, (File 392) creates a pilot regional probate court for children's matters.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 42 Nay 0